

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 708

Introduced by Senator Corbett

February 18, 2011

An act to ~~add Division 3.5 (commencing with Section 12500) to, and to repeal Chapter 3.5 (commencing with Section 12520.5) of Division 3.5 of, the Financial Code, relating to debt settlement~~ *amend Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to amend Section 1161b of the Code of Civil Procedure, relating to mortgages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Corbett. ~~Debt Settlement Consumer Protection Act. Residential mortgage loans: foreclosure procedures.~~

Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to comply with certain procedures, including recording a notice of default, and mailing the notice of default to the mortgagor or trustor. Existing law, until January 1, 2013, imposes additional requirements on mortgagees, trustees, beneficiaries, and authorized agents for residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, including prohibiting the filing of a notice of default on a mortgage or deed of trust secured by owner-occupied real property until 30 days after the borrower is contacted or 30 days after satisfying due diligence requirements to contact the borrower, as specified. Existing law, until January 1, 2013,

gives a tenant or subtenant in possession of a rental housing unit, at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property. Existing law requires a trustee or authorized representative to post a notice on the property to be sold that contains specified information relating to the rights of the resident of the property, and makes it a crime to tear down the notice within 72 hours of the time the notice is posted.

This bill would extend the operation of all of the provisions specified above to January 1, 2018.

By extending the operative period of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of an obligor for the purpose of paying bills, invoices, or accounts for the obligor.~~

~~This bill would enact the Debt Settlement Consumer Protection Act and provide for the registration, licensure, and regulation by the commissioner of debt settlement providers, defined as persons or entities engaging in, or holding themselves out as engaging in, the business of providing debt settlement services, as defined, to California consumers in exchange for any fee or compensation. The bill would provide for the registration of these persons by the commissioner until January 1, 2014, and thereafter would require these persons to obtain a license from the commissioner. The bill would establish criteria for the registration of a person by the commissioner to, or for the issuance by the commissioner of a license to, engage in debt settlement services; would require an application for registration or licensure to contain specified information and include evidence of a surety bond, and would require specified fees to be paid for registration or a license. The bill would require a license to be renewed biennially and would make a person who knowingly provides false information in an application for licensure subject to a civil penalty in a specified amount. The bill would prohibit a debt settlement provider from entering into an agreement~~

~~with a consumer for debt settlement services unless the provider retains on file specified written determinations, and provides a copy to the consumer, that includes an analysis indicating that the debt settlement program is suitable for the consumer and that the consumer can reasonably expect to receive a tangible net benefit from the program. The bill would require specified disclosures from a provider to the consumer before entering into an agreement for debt settlement services. The bill would require a consumer entering into a debt settlement services agreement to sign and date a specified consumer notice and rights form. The bill would specify required contents of debt settlement services agreements and would provide that a consumer has the right to terminate an agreement at any time through oral, written, or electronic notice to a provider. The bill would prohibit a provider from engaging in specified practices and would regulate the fees and charges imposed by a provider. The bill would authorize an injured consumer to recover specified damages from a provider that violates the bill's provisions and would make a violation of the bill's provisions a crime and subject to specified civil penalties. The bill would make a provider liable for any conduct of a person to whom the provider has delegated any of its duties or obligations if the person's conduct violates the bill's provisions. Because this bill would create a new crime, it would impose a state-mandated local program. The bill would authorize the commissioner to enforce these provisions.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:
3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision (g).

(2) A mortgagee, beneficiary, or authorized agent shall contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. During the initial contact, the mortgagee, beneficiary, or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the mortgagee, beneficiary, or authorized agent shall schedule the meeting to occur within 14 days. The assessment of the borrower's financial situation and discussion of options may occur during the first contact, or at the subsequent meeting scheduled for that purpose. In either case, the borrower shall be provided the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Any meeting may occur telephonically.

(b) A notice of default filed pursuant to Section 2924 shall include a declaration that the mortgagee, beneficiary, or authorized agent has contacted the borrower, has tried with due diligence to contact the borrower as required by this section, or that no contact was required pursuant to subdivision (h).

(c) If a mortgagee, trustee, beneficiary, or authorized agent had already filed the notice of default prior to the enactment of this section and did not subsequently file a notice of rescission, then the mortgagee, trustee, beneficiary, or authorized agent shall, as part of the notice of sale filed pursuant to Section 2924f, include a declaration that either:

(1) States that the borrower was contacted to assess the borrower's financial situation and to explore options for the borrower to avoid foreclosure.

(2) Lists the efforts made, if any, to contact the borrower in the event no contact was made.

(d) A mortgagee's, beneficiary's, or authorized agent's loss mitigation personnel may participate by telephone during any contact required by this section.

(e) For purposes of this section, a "borrower" shall include a mortgagor or trustor.

(f) A borrower may designate, with consent given in writing, a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, the ~~borrowers~~ borrower's financial

1 situation and options for the borrower to avoid foreclosure. That
2 contact made at the direction of the borrower shall satisfy the
3 contact requirements of paragraph (2) of subdivision (a). Any loan
4 modification or workout plan offered at the meeting by the
5 mortgagee, beneficiary, or authorized agent is subject to approval
6 by the borrower.

7 (g) A notice of default may be filed pursuant to Section 2924
8 when a mortgagee, beneficiary, or authorized agent has not
9 contacted a borrower as required by paragraph (2) of subdivision
10 (a) provided that the failure to contact the borrower occurred
11 despite the due diligence of the mortgagee, beneficiary, or
12 authorized agent. For purposes of this section, “due diligence”
13 shall require and mean all of the following:

14 (1) A mortgagee, beneficiary, or authorized agent shall first
15 attempt to contact a borrower by sending a first-class letter that
16 includes the toll-free telephone number made available by HUD
17 to find a HUD-certified housing counseling agency.

18 (2) (A) After the letter has been sent, the mortgagee,
19 beneficiary, or authorized agent shall attempt to contact the
20 borrower by telephone at least three times at different hours and
21 on different days. Telephone calls shall be made to the primary
22 telephone number on file.

23 (B) A mortgagee, beneficiary, or authorized agent may attempt
24 to contact a borrower using an automated system to dial borrowers,
25 provided that, if the telephone call is answered, the call is
26 connected to a live representative of the mortgagee, beneficiary,
27 or authorized agent.

28 (C) A mortgagee, beneficiary, or authorized agent satisfies the
29 telephone contact requirements of this paragraph if it determines,
30 after attempting contact pursuant to this paragraph, that the
31 borrower’s primary telephone number and secondary telephone
32 number or numbers on file, if any, have been disconnected.

33 (3) If the borrower does not respond within two weeks after the
34 telephone call requirements of paragraph (2) have been satisfied,
35 the mortgagee, beneficiary, or authorized agent shall then send a
36 certified letter, with return receipt requested.

37 (4) The mortgagee, beneficiary, or authorized agent shall provide
38 a means for the borrower to contact it in a timely manner, including
39 a toll-free telephone number that will provide access to a live
40 representative during business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

(B) A list of financial documents borrowers should collect and be prepared to present to the mortgagee, beneficiary, or authorized agent when discussing options for avoiding foreclosure.

(C) A toll-free telephone number for borrowers who wish to discuss options for avoiding foreclosure with their mortgagee, beneficiary, or authorized agent.

(D) The toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(h) Subdivisions (a), (c), and (g) shall not apply if any of the following occurs:

(1) The borrower has surrendered the property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(2) The borrower has contracted with an organization, person, or entity whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

(3) A case has been filed by the borrower under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case, or granting relief from a stay of foreclosure.

(i) This section shall apply only to mortgages or deeds of trust recorded from January 1, 2003, to December 31, 2007, inclusive, that are secured by owner-occupied residential real property containing no more than four dwelling units. For purposes of this subdivision, “owner-occupied” means that the residence is the principal residence of the borrower as indicated to the lender in loan documents.

(j) This section shall remain in effect only until January 1, ~~2013~~ 2018, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2013~~ 2018, deletes or extends
2 that date.

3 *SEC. 2. Section 2923.6 of the Civil Code is amended to read:*

4 2923.6. (a) The Legislature finds and declares that any duty
5 servicers may have to maximize net present value under their
6 pooling and servicing agreements is owed to all parties in a loan
7 pool, or to all investors under a pooling and servicing agreement,
8 not to any particular party in the loan pool or investor under a
9 pooling and servicing agreement, and that a servicer acts in the
10 best interests of all parties to the loan pool or investors in the
11 pooling and servicing agreement if it agrees to or implements a
12 loan modification or workout plan for which both of the following
13 apply:

14 (1) The loan is in payment default, or payment default is
15 reasonably foreseeable.

16 (2) Anticipated recovery under the loan modification or workout
17 plan exceeds the anticipated recovery through foreclosure on a net
18 present value basis.

19 (b) It is the intent of the Legislature that the mortgagee,
20 beneficiary, or authorized agent offer the borrower a loan
21 modification or workout plan if such a modification or plan is
22 consistent with its contractual or other authority.

23 (c) This section shall remain in effect only until January 1, ~~2013~~
24 2018, and as of that date is repealed, unless a later enacted statute,
25 that is enacted before January 1, ~~2013~~ 2018, deletes or extends
26 that date.

27 *SEC. 3. Section 2924.8 of the Civil Code is amended to read:*

28 2924.8. (a) Upon posting a notice of sale pursuant to Section
29 2924f, a trustee or authorized agent shall also post the following
30 notice, in the manner required for posting the notice of sale on the
31 property to be sold, and a mortgagee, trustee, beneficiary, or
32 authorized agent, concurrently with the mailing of the notice of
33 sale pursuant to Section 2924b, shall send by first-class mail in an
34 envelope addressed to the “Resident of property subject to
35 foreclosure sale” the following notice in English and the languages
36 described in Section 1632: “Foreclosure process has begun on this
37 property, which may affect your right to continue to live in this
38 property. Twenty days or more after the date of this notice, this
39 property may be sold at foreclosure. If you are renting this property,
40 the new property owner may either give you a new lease or rental

1 agreement or provide you with a 60-day eviction notice. However,
2 other laws may prohibit an eviction in this circumstance or provide
3 you with a longer notice before eviction. You may wish to contact
4 a lawyer or your local legal aid or housing counseling agency to
5 discuss any rights you may have.”

6 (b) It shall be an infraction to tear down the notice described in
7 subdivision (a) within 72 hours of posting. Violators shall be
8 subject to a fine of one hundred dollars (\$100).

9 (c) A state government entity shall make available translations
10 of the notice described in subdivision (a) which may be used by a
11 mortgagee, trustee, beneficiary, or authorized agent to satisfy the
12 requirements of this section.

13 (d) This section shall only apply to loans secured by residential
14 real property, and if the billing address for the mortgage note is
15 different than the property address.

16 (e) This section shall remain in effect only until January 1, ~~2013~~
17 2018, and as of that date is repealed, unless a later enacted statute,
18 that is enacted before January 1, ~~2013~~ 2018, deletes or extends
19 that date.

20 *SEC. 4. Section 2929.3 of the Civil Code is amended to read:*

21 2929.3. (a) (1) A legal owner shall maintain vacant residential
22 property purchased by that owner at a foreclosure sale, or acquired
23 by that owner through foreclosure under a mortgage or deed of
24 trust. A governmental entity may impose a civil fine of up to one
25 thousand dollars (\$1,000) per day for a violation. If the
26 governmental entity chooses to impose a fine pursuant to this
27 section, it shall give notice of the alleged violation, including a
28 description of the conditions that gave rise to the allegation, and
29 notice of the entity’s intent to assess a civil fine if action to correct
30 the violation is not commenced within a period of not less than 14
31 days and completed within a period of not less than 30 days. The
32 notice shall be mailed to the address provided in the deed or other
33 instrument as specified in subdivision (a) of Section 27321.5 of
34 the Government Code, or, if none, to the return address provided
35 on the deed or other instrument.

36 (2) The governmental entity shall provide a period of not less
37 than 30 days for the legal owner to remedy the violation prior to
38 imposing a civil fine and shall allow for a hearing and opportunity
39 to contest any fine imposed. In determining the amount of the fine,
40 the governmental entity shall take into consideration any timely

1 and good faith efforts by the legal owner to remedy the violation.
2 The maximum civil fine authorized by this section is one thousand
3 dollars (\$1,000) for each day that the owner fails to maintain the
4 property, commencing on the day following the expiration of the
5 period to remedy the violation established by the governmental
6 entity.

7 (3) Subject to the provisions of this section, a governmental
8 entity may establish different compliance periods for different
9 conditions on the same property in the notice of alleged violation
10 mailed to the legal owner.

11 (b) For purposes of this section, “failure to maintain” means
12 failure to care for the exterior of the property, including, but not
13 limited to, permitting excessive foliage growth that diminishes the
14 value of surrounding properties, failing to take action to prevent
15 trespassers or squatters from remaining on the property, or failing
16 to take action to prevent mosquito larvae from growing in standing
17 water or other conditions that create a public nuisance.

18 (c) Notwithstanding subdivisions (a) and (b), a governmental
19 entity may provide less than 30 days’ notice to remedy a condition
20 before imposing a civil fine if the entity determines that a specific
21 condition of the property threatens public health or safety and
22 provided that notice of that determination and time for compliance
23 is given.

24 (d) Fines and penalties collected pursuant to this section shall
25 be directed to local nuisance abatement programs.

26 (e) A governmental entity may not impose fines on a legal owner
27 under both this section and a local ordinance.

28 (f) These provisions shall not preempt any local ordinance.

29 (g) This section shall only apply to residential real property.

30 (h) The rights and remedies provided in this section are
31 cumulative and in addition to any other rights and remedies
32 provided by law.

33 (i) This section shall remain in effect only until January 1, ~~2013~~
34 2018, and as of that date is repealed, unless a later enacted statute,
35 that is enacted before January 1, ~~2013~~ 2018, deletes or extends
36 that date.

37 *SEC. 5. Section 1161b of the Code of Civil Procedure is*
38 *amended to read:*

39 1161b. (a) Notwithstanding Section 1161a, a tenant or
40 subtenant in possession of a rental housing unit at the time the

1 property is sold in foreclosure shall be given 60 days' written
2 notice to quit pursuant to Section 1162 before the tenant or
3 subtenant may be removed from the property as prescribed in this
4 chapter.

5 (b) This section shall not apply if any party to the note remains
6 in the property as a tenant, subtenant, or occupant.

7 (c) This section shall remain in effect only until January 1, ~~2013~~
8 2018, and as of that date is repealed, unless a later enacted statute,
9 that is enacted before January 1, ~~2013~~ 2018, deletes or extends
10 that date.

11 *SEC. 6. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution because*
13 *the only costs that may be incurred by a local agency or school*
14 *district will be incurred because this act creates a new crime or*
15 *infraction, eliminates a crime or infraction, or changes the penalty*
16 *for a crime or infraction, within the meaning of Section 17556 of*
17 *the Government Code, or changes the definition of a crime within*
18 *the meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20
21
22 **All matter omitted in this version of the bill**
23 **appears in the bill as amended in the**
24 **Senate, May 31, 2011. (JR11)**
25